

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	Criminal No. 18-CR-339
Plaintiffs,	§	
	§	<u>SIM LAKE</u>
v.	§	District Judge
	§	
	§	<u>Sheila Anderson</u> <u>Lanie Smith</u>
CLINT CARR	§	Case Manager Court Reporter
Defendant.	§	
	§	<u>Jury Trial</u>
	§	Proceeding

ADVICE OF COUNSEL INSTRUCTION

Mr. Carr’s advice-of-counsel instruction is drawn from the Eleventh Circuit Pattern Jury Instructions (Criminal Cases) (2016). The Good-Faith Reliance upon Advice of Counsel Instruction is Instruction S18 found on page 94 with annotations on page 95. The annotation specifically notes that the instruction may be applied to charges of conspiracy to launder money if there is an evidentiary predicate for the defense. *United States v. Petrie*, 302 F3d 1280, 1287 (11th Cir. 2002). See also *United States v. Vernon*, 723 F.3d 1234, 1269 (11th Cir. 2013) (“Good faith reliance on counsel’s advice can negate the mens rea element of willfulness. ... Because good faith reliance is an affirmative defense, a defendant bears the burden of proof on the issue.”). In *United States v. Scully*, 877 F.3d 464, 476-77 (2d Cir. 2017), the Second Circuit notes the limits of an advice-of-counsel in a fraud case specifically noting that the government bears the burden of intent to defraud even if the defendant secures an advice-of-counsel instruction. See also *United States v. Greenspan*, 923 F.3d 138, 147-48 (3d Cir. 2019) (court noted that burden shifting aspects of given instruction constituted plain error).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was served on March 3, 2022 on all parties of record via ECF.

By: /s/ Michael J. Wynne

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